

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

EVEREST NATIONAL INSURANCE	§	
COMPANY, as Subrogee of Prodigem,	§	
LLC	§	
Plaintiff	§	CIVIL ACTION NO. 14-CV-00405
vs.	§	JURY TRIAL DEMANDED
TRIANGLE F CONSTRUCTION, LLC	§	
Defendant	§	

**DEFENDANT TRIANGLE F CONSTRUCTION, LLC'S  
ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant TRIANGLE F CONSTRUCTION, LLC (Hereinafter, "Defendant") files this Answer to Plaintiff's Original Complaint as follows:

The first 16 paragraphs of this pleading are numbered to correspond to the paragraphs specified in the Plaintiff's Complaint.

**I. ADMISSIONS AND DENIALS**

**THE PARTIES**

1. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 1.

2. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph .2

3. Defendant denies that it is a corporation, but admits it is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business located at 4226 North China Road, Beaumont, Texas 77713.

## **JURISDICTION AND VENUE**

4. Defendant admits that the parties are citizens of different states but lacks knowledge or information sufficient to admit or deny the rest of the allegations of paragraph 4.

5. Defendant admits the allegations set forth in Paragraph 5.

## **GENERAL AVERMENTS**

6. Defendant admits that Prodigem, LLC owned or occupied the property at The Shire Apartments – 4020 Highway 365, Port Arthur, Texas.

7. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 7.

8. Defendant admits the allegations set forth in paragraph 8.

9. Defendant denies the allegations set forth in paragraph 9.

10. Defendant denies the allegations set forth in paragraph 10.

11. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 11.

12. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 12.

## **COUNT I NEGLIGENCE – TRIANGLE F CONSTRUCTION, LLC**

13. The allegations set forth in paragraph 13 require no response.

14. Defendant denies the allegations set forth in paragraph 14 and objects and denies the allegations set forth below:

a. Defendant denies the allegation set forth in this subsection.

- b. Defendant objects to this subsection as vague and ambiguous. The allegations in this subsection do not provide information sufficient for Defendant to form a response, and Plaintiff should be ordered to provide a more definite statement of the phrases and words utilized in accordance with Rule 12(e) of the Federal Rules of Civil Procedure. Defendant therefore denies the allegations in this subsection.
- c. Defendant objects to this subsection as vague and ambiguous. The allegations in this subsection do not provide information sufficient for Defendant to form a response, and Plaintiff should be ordered to provide a more definite statement of the phrases and words utilized in accordance with Rule 12(e) of the Federal Rules of Civil Procedure. Defendant therefore denies the allegations in this subsection.
- d. Defendant objects to this subsection as vague and ambiguous. The allegations in this subsection do not provide information sufficient for Defendant to form a response, and Plaintiff should be ordered to provide a more definite statement of the phrases and words utilized in accordance with Rule 12(e) of the Federal Rules of Civil Procedure. Defendant therefore denies the allegations in this subsection.
- e. Defendant objects to this subsection as vague and ambiguous. The allegations in this subsection do not provide information sufficient for Defendant to form a response, and Plaintiff should be ordered to provide a more definite statement of the phrases and words utilized in accordance

with Rule 12(e) of the Federal Rules of Civil Procedure. Defendant therefore denies the allegations in this subsection.

- f. Defendant objects to this subsection as vague and ambiguous. The allegations in this subsection do not provide information sufficient for Defendant to form a response, and Plaintiff should be ordered to provide a more definite statement of the phrases and words utilized in accordance with Rule 12(e) of the Federal Rules of Civil Procedure. Defendant therefore denies the allegations in this subsection.
- g. Defendant objects to this subsection as vague and ambiguous. The allegations in this subsection do not provide information sufficient for Defendant to form a response, and Plaintiff should be ordered to provide a more definite statement of the phrases and words utilized in accordance with Rule 12(e) of the Federal Rules of Civil Procedure. Defendant therefore denies the allegations in this subsection.

**JURY DEMAND**

15. The allegations set forth in paragraph 15 require no response.

**RESERVATION OF RIGHTS**

16. The allegations set forth in paragraph 16 require no response.

**PLAINTIFF'S PRAYER FOR RELIEF**

17. Defendant denies that Plaintiff is entitled to any relief in its suit against Defendant, including the following:

## **II. AFFIRMATIVE DEFENSES**

18. Defendant's responses in Paragraphs I - 17 set forth above are hereby incorporated by reference. Defendant further pleads each of the following affirmative defenses in the alternative:

19. Defendant asserts that the damages made the basis of this lawsuit were caused by the acts and omissions of other parties, whether a party to this lawsuit or not, over whom Defendant had no supervision or control, and their conduct proximately caused the Plaintiff's alleged damages;

20. Defendant asserts that no act or omission on its part was a proximate cause or cause-in-fact of the damages alleged herein;

21. Defendant further asserts that the damages alleged in this suit resulted from an intervening, superseding, new or independent cause, each of which was the proximate cause, producing cause or sole proximate cause of the alleged damages;

22. Defendant reserves the right to submit an issue on the negligence of the Plaintiff, any settling defendant, any third-party defendant, any responsible third party, and any other parties, whether a party to this lawsuit or not, in accordance with section 33.003 of the Texas Civil Practice and Remedies Code;

23. Defendant further pleads that an unknown Person (hereafter "John Doe") caused the damages claimed. On information and belief, John Doe intentionally set fire to the tar paper on the exterior of the building resulting in the fire damaged claimed by Plaintiff.

## **III. JURY DEMAND**

24. Defendant affirmatively requests a jury trial.

**IV. CONCLUSION AND RELIEF REQUESTED**

25. For the reasons stated above, Defendant TRIANGEL F CONSTRUCTION, LLC respectfully requests that the Court enter Judgment that Plaintiff, take nothing on its claims and any other relief to which Defendant may be entitled.

Respectfully submitted,

By: /s/ Joseph M. Heard  
Joseph M. Heard  
Federal ID No. 1295  
State Bar No. 09337500  
HEARD & MEDACK, P.C.  
9494 Southwest Freeway, Suite 700  
Houston, Texas 77074  
Telephone: (713) 772-6400  
Facsimile: (713) 772-6495  
Email: [jheard@heardmedackpc.com](mailto:jheard@heardmedackpc.com)

ATTORNEY-IN-CHARGE FOR DEFENDANT  
TRIANGLE F CONSTRUCTION, LLC

Of Counsel:

William E. Calvert II  
Federal ID No. 570837  
State Bar No. 24045605  
Email: [wcalvert@heardmedackpc.com](mailto:wcalvert@heardmedackpc.com)  
HEARD & MEDACK, P.C.  
9494 Southwest Freeway, Suite 700  
Houston, Texas 77074  
Telephone: (713) 772-6400  
Facsimile: (713) 772-6495

**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing instrument to which this Certificate is attached was duly served upon each party by facsimile, U.S. First Class Mail and/or using the ECF System for filing and transmittal of a Notice of Electronic Filing pursuant to the Federal Rules of Civil Procedure on this 28<sup>th</sup> day of August, 2014.

**Via Facsimile (214) 462-3299**

James Dendinger  
Cozen O'Connor  
1717 Main Street, Suite 3400  
Dallas, TX 75201  
*Counsel for Plaintiff*

**Via Facsimile (215) 665-2013**

James P. Cullen, Jr.  
Cozen O'Connor  
1900 Market Street  
Philadelphia, PA 19103  
*Counsel for Plaintiff*

/s/ Joseph M. Heard

Joseph M. Heard